



## PROTOCOL PROPOSAL FOR PRERECORDING EVIDENCE FROM ESPECIALLY VULNERABLE VICTIMS

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*Prerecorded evidence is a legal form which has basic two purposes in especially vulnerable victims: on one hand, protecting the victim's testimony (cognitive evidence) from deterioration derived from many different, inadequate approaches, and on the other, avoiding revictimization by the police and justice system. Aware of the assistance that forensic psychology can provide in carrying out these proceedings, this article describes a proposal for prerecording evidence based on knowledge of the psychology of testimony and of psychology of criminal victimization, in addition to the practical experience of criminal psychologists and forensic psychologists.*

**Key words:** Forensic psychology, Sexual abuse, Victims, Eyewitness testimony

*La prueba preconstituida es una fórmula jurídica que en los casos de víctimas especialmente vulnerables tiene dos objetivos fundamentales: por un lado, proteger el testimonio de la víctima (indicio cognitivo) del deterioro derivado de múltiples e inadecuados abordajes, y por otro, evitar la revictimización provocada por el sistema policial y de justicia. Conscientes de la ayuda que la Psicología Jurídica puede realizar al desarrollo de esta diligencia procesal, en el presente artículo se desarrolla una propuesta para la conducción de la prueba preconstituida basada en los conocimientos provenientes de la Psicología del Testimonio y de la Psicología de la Victimización Criminal además de la experiencia práctica de psicólogos criminalistas y forenses.*

**Palabras Clave:** Psicología jurídica, Abuso sexual, Víctimas, Memoria de testigos.

**V**ulnerable victims are individuals at greater risk of secondary victimization or revictimization by the justice system, because of their poor ability to defend their rights without help, and are even at risk of being excluded by the system. Especially vulnerable victims are usually minors, the elderly, disabled or mentally ill. Several studies have attempted to establish the prevalence of some of these especially vulnerable victims, mainly minors (Stoltenborgh, van Ijzendoorn, Euser and Bakermans-Kranenburg, 2011) and the disabled (González, Cendra and Manzanero, 2013). However, lack of data on prevalence of crimes on the elderly and mentally ill and limitations of some of the studies of prevalence in minors impede real estimation of the problem (Ramírez and Fernández, 2011). Although reviews in several countries (Stoltenborgh et al., 2011) suggest an increase in the number of complaints filed, this does not necessarily mean an increase in this criminal phenomenology (Garrido and Masip, 2004). Crimes against

these classes are especially problematic when it is hard to prove the facts (there are no witnesses or physical evidence that corroborates them), when the victims have limitations in reporting them and when the crime is systematically covered up because it takes place within the family (private). This happens for example in sexual abuse, where there is a high rate of unreported crime (Lameiras, 2002).

Consideration of minors and disabled as subjects with rights and specific needs derived from their psychological characteristics is relatively recent. It began for minors at the end of the 19<sup>th</sup> century and became consolidated in the second half of the 20<sup>th</sup> (Arruabarrena and De Paúl, 2008). Although it was not until 2006 that the UN declared the *International Convention on Persons with Disabilities*. This new social perspective involves legal changes. One of the areas of special protection of minors and disabled goes through the Justice System. In 2005, The United Nations Economic and Social Council approved *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*, providing good practices based on the following child rights: a) to be treated with dignity and compassion, b) to be protected from dis-

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crimination, c) to be informed, d) to be heard and express views and concerns, e) effective assistance, f) privacy, g) to be protected from hardship during the justice process, h) safety, i) special preventive measures, and h) reparation.

With respect to the disabled, Article 13 of the Convention on this class specifies: "1) States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. 2) In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff."

In Spain, policies and services for the care and protection of minors did not begin until the nineteen-eighties, after the proclamation of the Constitution. Significant legislative changes came with Law 21/87 of November 11<sup>th</sup> which modified certain articles in the Civil Code and the Law on Civil Procedure (LEC) on matters of adoption and other reforms for protecting minors, and Organic Law 1/1996 of January 15<sup>th</sup> on Legal Protection of Minors, which with regard to children in legal proceedings, in its Art. 9.1 states that appearance of minors in court, "shall be in the manner most appropriate to the situation and their development, taking care to maintain their privacy."

Although there is no authentic statute of protection of minors in the criminal process in our legislation when they appear as victims or witnesses, there have been important reforms in the Law on Criminal Procedure (LECr) directed at procuring this protection. Thus in Organic Law 8/2006 of December 4<sup>th</sup> modifications were made in this sense in Arts. 433, 448, 707 and 731b that open a new range of powers to judges and courts for providing concrete protection for minors who are victims or witnesses (Alcón and De Montalvo, 2011).

It is in this framework of protection of especially vulnerable individuals as they undergo criminal proceedings, in which throughout this study, the advisability of prerecorded, also sometimes called anticipatory evidence, is going to be dealt with (Magro, 2008). In the internation-

al panorama, both in the Strasbourg Court (Sentence of the ECtHR of October 2, 2002, SN against Sweden case; and December 16, 2003, Magnusson against Sweden case) and the European Court of Justice (Sentence of the ECJ of June 16, 2005, María Pupino, Case C-105/03) admit the validity of prerecorded evidence when victims are minors. In Spain there is also plentiful jurisprudence, as already mentioned, and Sentence n° 96/2009 of the Supreme Court (Courtroom 2) is a good reference because it makes an updated interpretation of the term "impossibility"<sup>1</sup> of appearing on the day of the Hearing, including cases in which there is a certain risk of bringing on consequences to the psychological and moral safety of minors who are victims of sexual crimes.

Nevertheless, our Supreme Court recalls that this practice must not be indiscriminate, and that each minor will have to be evaluated to see whether his/her appearance in court could affect his/her personal development or mental health (Molina, 2009). This precept is also mentioned in Circular 3/2009 of the Attorney General, which stipulates that in cases of minors who are victims of sexual crimes at least the following two circumstances must coincide for evidence to be prerecorded: a) it is accredited by that the minor's appearance in hearing may cause him/her severe psychological harm (e.g., SC sentence n° 332/2006 of March 4<sup>th</sup>), and b) the child is very young and the time lapse between the first declaration and the date of the hearing could affect the quality of his/her account (i.e., SC sentence n° 1582/2002 of September 30<sup>th</sup> SC sentence n° 174 (2011 of November 7<sup>th</sup>).

With respect to other classes of especially vulnerable victims, Spain ratified the *International Convention on Rights of Persons with Disabilities* in 2007, and at the present time the *Statute of Victims*, which will attempt to apply the Convention to our legislation, is under preparation. European Council Framework Decision 2001/220/JHA of March 15, 2001 (LCEur 2001, 1024) on the standing of victims in criminal proceedings, requires passive subjects of criminal acts who are particularly vulnerable to be given specific treatment best suited to their circumstances (Art. 2, Section 2). More recently, Directive 2012/29/EU of the European Parliament and of the Council of October 25, 2012, established the minimum standards on the rights, support and protection of victims of crime, including "Victims with

<sup>1</sup> Closer to Art. 777 LECr, which leaves open the reason for which it is impossible to give evidence on the day of the hearing, unlike the ordinary proceeding which stipulates very specific cases (death, disability or residence outside the Peninsula).



specific protection needs" in Arts. 22 and 23, although will not be compulsory for Member States until November 16, 2015. In this legal framework, prerecorded evidence has begun to be applied to individuals with intellectual disability and therefore is part of Spanish jurisprudence (e.g., SC sentence nº 962/2011 of September 29, Regional Sentence Lerida nº 322/2012 of September 24<sup>th</sup>).

Therefore, in Spain appealing to prerecorded evidence is legally possible and has two basic goals: on one hand, avoid the consequences of secondary victimization (safeguarding the higher interest of especially vulnerable victims), and on the other, protect the item of proof (testimonial proof) for the benefit of obtaining the material truth (Gisbert, 2011). The assistance that the legal psychologist can offer law to achieve both goals is therefore obvious (De la Rosa, 2011), and the contributions of psychology of testimony and psychology of criminal victimization are recalled in this article. A protocol for action based on the experience of criminal and forensic psychologists (Muñoz, Manzanero, Alcázar, González, Pérez and Yela, 2011; Recio, Alemany and Manzanero, 2012) in the practice of procedure related to prerecording evidence is also proposed.

#### **COGNITIVE EVIDENCE: CHARACTERISTICS AND NEEDS FOR PROTECTION**

Different types of evidence are used to establish the legal reality of the facts. The most common are material, documentary, expert and testimony. The last is related to declarations about the facts and identification of the perpetrators. All of them attempt to acquire a description of what happened and the participants in it, as well as their recognition. Attentional, perceptive, memory, language and thought processes influence these tasks. They are therefore called cognitive evidence. Order JUS/1291/2010 of May 13<sup>th</sup> on regulations for preparation and submission of samples for analysis by the Institute of Toxicology stipulates that proof must be kept under a chain of custody to avoid damage, substitution, contamination or destruction. The custody procedure includes how to extract or gather evidence, its conservation and registered submission. It is usually applied to material proof, however, by extension, should also be to testimonial. As a general rule, what really happens is that testimonial proof is systematically excluded from these procedures, and the declarations and identifications are not kept under the chain of custody that would avoid

memories being altered, replaced or destroyed. Because, contrary to common belief, memory is not infallible, nor does it work like a video camera that faithfully records everything that happens to be reproduced again without variation later, any number of times necessary. Memories are in continual transformation and are affected by deterioration due to the passing of time and interference from outside information (Baddeley, Eysenck and Anderson, 2010).

In general, we would agree that it would not make sense to arrive at the scene of the crime to collect samples after a long time, and every time someone does, the evidence could be contaminated if it is not done carefully enough. Furthermore, all the material collected that could be tampered with or contaminated during transfer must be kept under optimum conditions for its protection and least deterioration. Cognitive evidence (memory) also deteriorates over time and is reconstructed every time the witness (victim or accused) remembers and narrates what happened, and this could be contaminated by information from the setting, questions asked, communications media or the comments of others. Degradation and contamination of memories are especially severe when witnesses are vulnerable, the longer the time that has gone by, and in newsworthy events. Studies on memory function show that there is no procedure for recovering original memories once they have been transformed (Manzanero, 2010; Toglia, Read, Ross and Lindsay, 2007). In general, when the chain of custody of evidence has not been kept, it is no longer valid, due to the possibility of its contamination, replacement, damage or destruction. All these effects can happen to memories when due precaution is not taken and in this sense testimonial evidence could be equally invalidated.

Research in psychology of testimony has delimited the various factors that can affect the memory imprint and that have traditionally been organized in three groups (Manzanero, 2010):

- a) Factors that affect the codification stage of information. In this group on one hand, we would have characteristics of the situation of criminal victimization (i.e., perceptive conditions, duration, sensation of risk to life, etc.) and, on the other, characteristics of the victim/witness (sex, age, emotions felt, etc.).
- b) Factors that affect the information retention stage including retention time, number of times gone over and recodifications.



c) Factors that affect the information recall stage. This alludes to the number of times the victim has been approached about the alleged facts reported and the manner in which this was done. Research in this sense clearly indicates that the more the victim has had to recall the memory, the higher the probability of its distortion. On the other hand, it has also been found that the younger minors are, the more vulnerable they are to suggestion derived from improper exploration (i.e., the directive interview style, using leading, trick, suggestive, and forced yes/no choice questions).

Contaminating factors that impinge on the codification and retention stages escape control directed at minimizing their impact. However, the factors that affect the recall stage are avoidable as long as the victim is approached properly. In this sense, the benefits of an appeal to prerecorded evidence guided by an expert in legal psychology, primarily when dealing with especially vulnerable witnesses and victims for whom police and courtroom examination have to be adapted (Milne and Bull, 2006) as mentioned above and established by Spanish and international legislation to guarantee the rights of these classes, are clear.

### THE PSYCHOLOGICAL IMPACT ON THE ESPECIALLY VULNERABLE VICTIM: PREVENTING SECONDARY VICTIMIZATION

Various studies have demonstrated the difficulty in establishing a single psychopathological pattern associated with experiencing a situation of victimization, and there is a wide variety of signs and symptoms of very little specificity in samples analyzed (Milner and Crouch, 2004; Pereda, 2009). Thus, for example, in the special case of sexual abuse, cognitive, emotional, behavioral and relational maladjustment of victims and their physiological functions have been found depending on their age (Echeburúa and Guerricaechevarría, 2005). Other times the victimizing experience is not traumatizing (i.e., they lack cognitive ability to give social significance to the facts, and they experienced no pain during performance of the illicit sexual activity) and does not produce destabilization in their psychological state. In general terms, the emotional factors associated with the memory of the traumatic offense often do not fit the expected (Manzanero, Recio, Alemany and Pérez-Castro, 2013). It therefore seems hard to accurately determine the presence or absence of a criminal situation in view only of the psychological state of the victim (Milner and Crouch,

2004). Thus for example, many of the psychological maladjustments associated with child sexual abuse could be the fruit of other psychosocial stressors in the minor's life (for example, parents breaking up).

According to the data found in several different studies, many factors could modulate a crime's impact on the victim, as well as his/her future recovery. Among those factors, are the characteristics of the crime, familiarity with the aggressor, intellectual development, vulnerability and resilience factors, the sex of the victim and the response of the supporting setting (Ramírez and Fernández, 2011). The most severe effects are linked to a higher level of physical contact, higher frequency and duration of the victimizing situation, whether the aggressor is a significant person for the victim and the use of force and violence. The worst prognoses for recovery seem related to less support and more conflict within the family (Lameiras, 2002).

It is therefore important for the technician in charge of guiding prerecorded evidence to have a profile of the victim's psychological state beforehand to orient the suitability or not of the time chosen based on clinical criteria. If he decides to go ahead and prerecord evidence, the interviewer must pay attention to indicators of emotional suffering in the victim and apply crisis intervention techniques that minimize the level of distress, or advise the judge to suspend the session, since on top of additional harm, it could affect his/her testimony, placing the victim in a position of legal defenselessness.

Furthermore, when especially vulnerable victims go through the justice system, it could lead to what is known as secondary victimization. The main risk factor in this sense would be their overexposure to different interview examinations in a situation of vulnerability that could cause either continually re-experiencing negative emotions associated with the traumatic experience or the sensation of being discredited, mainly if their declarations are strongly questioned by the defense of the accused, which affects their self-esteem and favors maintaining or developing feelings of guilt. Both questions interfere with positive therapeutic evolution (Hamblen and Levine, 1997; Lameiras, 2002; Turman and Poyer, 1998).

Again the legal option of prerecorded evidence seems an appropriate resource that could contribute to minimizing these secondary effects derived from the especially vulnerable victim going through the criminal procedure, by integrating psychological demands with legal imperatives (Echeburúa and Subijana, 2008). The following points are essential to ensure that these proceedings are



performed properly (adapted from Caso, Arch, Jarne and Molina, 2011):

- ✓ Principle of protection. The victim is the center of attention, and all legal efforts are directed at securing a comfortable context, a quiet, confidential setting in which he/she can express himself/herself freely.
- ✓ Principle of suitability to the concrete circumstances of each vulnerable victim. The interviewer should prepare the examination by paying attention to the victim's psychological characteristics, and adapt the questions to the victim's emotional development and cognitive abilities (thought and language).
- ✓ Principle of privacy. The victim must express himself/herself freely and sincerely. A setting is found in which all those circumstances that could inhibit the vulnerable victim (i.e., characteristics that underline the authority of the interviewer) should be minimized. The less noticeable the presence of other actors in the legal process is, the more comfortable the victim will feel. Privacy is not synonymous with covering up. The interviewer must explain to the victim, according to his/her cognitive abilities, the development and direction of the proceedings. Never lie.
- ✓ Possibility of expert participation. The judge decides according to the circumstances whether or not this additional guarantee is necessary. The situation of the minor in the proceedings (witness/victim), his/her cognitive development and severity of the crime seem to be the criteria used by the judge to recur to expert collaboration (Circular 3/2009 FGE). In this sense, the Supreme Court (Sentence nº 96/2009) allows the expert an active role in developing the evidence and is not merely a spectator: "Action by the expert may not be limited to being a spectator or passive presence, but actively contribute the knowledge or skills within his/her experience... This does not mean that the expert directs the interrogation, but that the examining judge does so with intervention by the parties present, under his/her control and by means of the expert as his/her instrument." One possibility of expert intervention is clearly given in Art. 433 of the LECrim, "Any declaration by a minor may be made before experts and always in the presence of the prosecutor." In this respect, it seems worth mentioning the words of Caso et al. (2011), "*The judge is not a psychologist, nor should he believe that psychology is a simple science. His experience is insufficient. Approaching such interviews alone may cause the minor severe harm.*" A fa-

cilitator is recommended for victims with intellectual disability (Recio et al., 2012).

#### **ACTION PROPOSAL FOR DEVELOPING PRERECORDED EVIDENCE**

Keeping in mind the two basic benefits of prerecorded evidence, safeguarding the cognitive evidence (testimony) as an item of proof and avoiding secondary victimization, a design for action based on the practical experience of criminal psychologists and forensic psychologists in our country is proposed in the following sections. Remember that for minors, the need for such a protocol was posed during parliamentary proceedings for Organic Law 8/2006, which although not included in the law in the end, stated that, "...in the declarations of minors in criminal processes, their declarations shall be taken by an expert whom the judge, the prosecutor and the parties have previously provided with the questions, and this examination shall be followed by the judge and the parties through a one-way mirror or on closed-circuit video, and they shall be able to suggest new questions through the expert, which shall also be recorded on audiovisual support for their evaluation," (Circular 3/2009 FGE). The UN *Convention on Rights of Persons with Disabilities* stipulates the same possibility.

These proceedings, as already mentioned, are not of an expert witness, because it is an alternative way of examining the victim, and not equivalent to a forensic evaluation of the case, for which the technician may or may not be summoned by judicial warrant and which would involve another type of intervention in addition to acquiring and evaluating the testimony (e.g., psychopathological exploration, application of psychometric tests, contact with other professionals, etc.). It would also have to be differentiated from police proceedings derived from the criminal investigation of the alleged facts and that could include the interview with the victim. In the light of research, it is recommended that if interviews are repeated, they be done by the same interviewer (Milne and Bull, 1999; Ainsworth, 2001; Milne and Bull, 2006; Bull, Valentine and Williamson, 2009). Therefore, if the criminal psychologist has already approached the victim within the criminal investigation, he should be in charge of guiding prerecorded evidence. Otherwise, the demand is usually performed by the court forensic psychologist.

Once the examining judge has decided it is advisable to recur to these proceedings and the court requests the



intervention of the technician, he must explain to the judge the best conditions for achieving the intended purpose, as well as how the various judicial operators should intervene (such as passing the technician the questions they wish to ask the victim in writing). He also explains that the pace of the interview will be marked by the characteristics of the victim and the limitations that could arise during the course of the interview, which could sometimes lead to its suspension (anxiety of separation, qualms about talking to the interviewer, emotional blockage, continuous weeping, etc.). When these warnings have been given, based on scientific knowledge for optimizing acquisition of testimony, the technician should follow the steps below for prerecorded evidence.

### *1) Emptying the file and coming into contact with the victim's context*

The technician analyzes all the information available in the police report and/or court file, to acquire a clear vision of the alleged criminal offence committed (which will later guide his/her questions), and will confer with caregivers or legal representatives of the vulnerable victim to acquire information on his/her psycho-evolutionary process, ethnic factors (if he is from another culture), daily routines, situation of revelation of the facts of the crime, reaction by the context and psychological state of the victim.

### *2) Preparing the room*

This point, in spite of its importance, is usually imposed by availability and means of the Courthouse. It should be recalled that the interview must be followed in real time by the various judicial operators (judge, prosecutor and attorneys for the parties) so any questions for clarification deemed appropriate may be made by the technician later. Moreover, the interview must be recorded on audiovisual support so it can be reproduced later at the hearing and evaluated by the sentencing court (notwithstanding its use as material assisting in making any expert analysis on the credibility of the testimony). Ideally, there should be two adjacent rooms connected by a closed-circuit television system or one-way mirror (Gesell chamber). The solution most used by the authors of this study is a courtroom (in which the parties are present), and a nearby office (where the interview is performed), in which there is a video camera and wiring for live viewing of the interview on a monitor installed in the courtroom. The recording equipment should be as discrete as

possible and before starting to take evidence, all the equipment should be checked to see that it is working properly.

The atmosphere in the interview room must be private, with good lighting, ventilation and temperature, informal, with furnishings adapted to the size of the person to be interviewed and undisturbed, with nothing that could distract his/her attention. When there is no specific place for this type of proceedings, and other options are given the technician, he should make his/her choice based on the criterion of a room that would cause the least stress to the victim. The room should definitely be the least intimidating possible to facilitate establishing a rapport (warm, trusting atmosphere). In this sense, teenagers are usually more comfortable in an adult setting (Carrasco, 2012).

### *3) Preparing the interview*

Analysis of all the information available and interviews with significant people in the especially vulnerable victim's setting enable the technician to design the interview around four important points: the time, duration, the room (already discussed) and the interviewer's intervention.

Insofar as possible, the session should be planned to take place at the best time for the victim, both emotionally (psychological situation derived from the events) as well as daily routine (mealtimes and/or sleep, leisure activities, etc.) so his/her cooperation is not affected by these variables (Ezpeleta, 2001). In this sense, it should be recalled that many victims with these characteristics do not go to the interview voluntarily.

Taking prerecorded evidence is stressful for any especially vulnerable person, and more or less intense depending on their cognitive development and prior emotional condition, for two basic reasons: first, because the court context is unknown and extremely formal, and second, because the cause of the victim's interaction is unpleasant, above all if the events involved a traumatic experience. Therefore, the interview should be only as long as is indispensable, always paying attention to the emotional state of the person being interviewed and the legal reason for it (means of proof). Studies show that it is not recommendable for the interview to last over an hour, even under ideal circumstances. In any case, signs of fatigue and loss of concentration must be watched for, because if the person is very tired or has given up, it is better to end the interview (Carrasco, 2012).

In the first place, the interviewer should take care that



his/her clothing does not signal inequality in the relationship. Concerning verbal communication, he/she should position himself/herself at the same visual height as the person being interviewed to stimulate treatment of equality, favor communication and perceive nonverbal signals that could show emotional distress. Direct visual contact is avoided when facts related to the person's victimization are approached, especially in sex crimes. Appropriate interviewer body posture should express openness to the victim's discourse, leaning slightly forward and with arms uncrossed. When he/she speaks, it is in a warm melodious tone, slowly, expressly avoiding childish language. Although it is also a good idea to avoid being overly warm and friendly, because it could provoke too strong a desire to please, and facilitate contribution of more extensive information, but compromise its reliability. The interview style, while not forgetting its legal nature, should be flexible, since victims of this kind react unproductively to the contexts and methods of rigid interviews (Carrasco, 2012).

#### 4) Interview stages

The technical interview in prerecorded evidence could be divided in four stages, throughout which all the scientific recommendations existing on acquiring testimony from vulnerable persons would be applicable (e.g., Milne and Bull, 1999; Lamb, Orbach, Hershkowitz, Esplin and Horowitz, 2007; Milne and Bull, 2006; Bull et al., 2009; Alemany, Quintana, Recio, Silva, Manzanero, Martorell and González, 2012):

##### a) Introduction

The basic purpose of this stage is to establish a rapport with the victim, prepare him for developing the evidence, evaluate the level of his cognitive development (linguistic development and level of reasoning and knowledge), and observe the development of his social skills. This stage is also important to favor attention and a feeling of safety (Ezpeleta, 2001), so he should be encouraged to express any doubts and concerns. Since it is a preparatory stage, it is unnecessary to record it, except when expressly stipulated by the examining judge; although if later it is planned to evaluate the credibility of the victim's testimony, it would not be excessive (and, meanwhile, that recording could always be used by the expert to check his own skill). The main steps to be followed are:

- ✓ The interviewer receives the person to be examined and introduces himself by name.

- ✓ The person to be examined is asked his full name, age, and whether he knows where he is, and where he lives. Depending on the age and ability of the person, he could even be shown around the Courthouse and introduced to people who are going to take part in the evidence, explaining their roles, all in understandable language.
- ✓ Explanation of the framework of the interview. He is told what the interview is for, avoiding unrealistic expectations about the purpose and requirements of the interviewer and explaining how the interview will be carried out, that he is going to be alone in the room with the technician/s, and that there will be other people observing, but in a different room. These explanations can be given while visiting both rooms.
- ✓ Explanation about the limits of confidentiality. The reason that other people will be watching the interview is because they want to help, and guarantee his safety. People from his setting (teachers, neighbors, friends, etc.) and the rest of people who work at the Courthouse will not have access to the information.
- ✓ Establish the rules of the interview. The person is told to listen closely to the questions, not be in a hurry to answer, and to tell everything he can remember, although it may seem unimportant, but only if he is sure of it. Point out that if he thinks he has made a mistake, he can change his mind and should ask for an explanation if he does not understand a question, encouraging him/her to make an effort and do the best he can.
- ✓ Evaluate the person's understanding of the concepts of true and false along the way, making sure that he understands that it is very important to tell the truth about everything. Remind the person that he can say he does not remember or that he does not know the answer to the question. Tell him it is better to say he does not want to talk about a subject (situation we have to respect) than to invent it (or lie). He is told that his story is important, expressly requesting his collaboration. It is also advisable to inform him that although he is asked about the same thing several times, this does not mean that his answers are wrong, but that the interviewer might be confused.
- ✓ Warn him that the interview is going to be recorded, and explain why and how important it is. He can even be allowed to help install the audiovisual recording equipment so he is not worried about it.
- ✓ Tell him where his family members or the caregiver who came with him are going to be during the interview.



## b) Transition stage

The goals of this stage are to secure rapport, progress in the exploration of his/her cognitive and social skills, training him/her in the technique of free narration that will be used in the following stage, and evaluate how he/she remembers. During this stage, the technician must use a strategy that is not very directive, approaching some pleasant neutral subject first (friends, games, TV programs, hobbies, etc.), using the information given previously by his/her context on his/her interests and strengths), and concentrating attention later on a recent positive episode that he/she can be asked to remember and describe in as much detail as possible. This will serve as training for later detailed explanations, while at the same time enables evaluation of his/her cognitive abilities. During this stage, the interviewer and the person to be examined are alone. However, since audiovisual media are going to be used, there could be an assistant (properly introduced), who would not intervene in the interview but would make sure that the technical media (video camera and wiring) are working properly (sound and image are received well in the room where the observers are, that the camera is well-centered at all times and that the interview is recorded). This preparatory stage should also be recorded, and watched by the parties, as the examining judge deems appropriate.

## c) Getting the account

The purpose of this stage is to get the most extensive, accurate account possible of the events under investigation. This stage, which continues from the one before, starts when the interviewer thinks the time is right, beginning with a lead-in sentence such as, "do you know why you came here today? Tell me everything you can remember about that situation." In this sense, the technician can recur to the use of protocols already demonstrated (see the references already cited on interviewing minors or persons with intellectual disability, and especially for this stage, the paper by Lamb et al., 2007, on the NICHD protocol; or the proposals by Recio et al., 2012 for the disabled). At the end of this period, the technician must have acquired sufficient information on the following questions (in case of child sexual abuse; for other crimes, it would have to be adapted to the points to be documented):

✓ *Who*: Name of the alleged aggressor and his/her relationship.

- ✓ *When*: What time of day (morning, afternoon, night), week (week end, daily), before/after ... the events investigated occurred. This is of special legal importance because depending on the age and ability of the person evaluated at the time of the alleged crime, the legal qualification of the events will be one or another, so the technician should not be surprised that the various judicial operators emphasize this. Nevertheless, it should be kept in mind that some especially vulnerable people might not be able to answer this question or those concerning frequency.
- ✓ *Where*: What the person saw while the alleged crime was being committed, what the place was like, what part of the house, whether it was in more than one place, etc.
- ✓ *Frequency*: Know how much (a lot/a little) and since when.
- ✓ *How*: What the alleged aggressor did, what the victim did, positions they were in, whether they talked about anything, etc.
- ✓ *Circumstances of the crime*: If it is a sexual crime, if they had their clothes on or off, if there was a light on or not, if there was noise, if the door was open or closed, if the victim has been seen naked, whether he/she saw the suspect's "dick/penus", whether pictures were taken at any time, etc.
- ✓ *Persons involved* (whether anyone else was present).
- ✓ Whether the victim witnessed *similar acts* against other persons
- ✓ Find out whether the alleged perpetrator said things like *don't tell/it's a secret*.
- ✓ Find out whether the alleged perpetrator *threatened/abused him in any way*. If he threatened the victim, find out what the threat consisted of and what importance/consequences it had for him
- ✓ Find out if the alleged perpetrator *seduced* him with gifts, signs of affection.

When the technician ends his/her intervention, he will pause and go to the room where the observers are (while his/her assistant, if any, remains with the person examined, talking about neutral subjects), in order to compile any questions they may have, which they will have been taking note of as they were viewing the interview. The person examined should be informed of the reason why the interviewer is leaving the room. The questions posed by the various judicial operators are asked the person examined (victim) by the technician after prior rewording, according to the following procedure and in order by type of ques-



tion (Manzanero, 2010). This process is repeated as often as the parties consider necessary until they are sure the Examining Judge deems that the legal principle of contradiction between parties has been complied with.

The approach to the events reported ends by checking whether there are any other relevant subjects that have not been dealt with, and the person examined is given an opportunity to comment. Recording of the interview could end here. It is duly processed by the secretary and given to the examiner, and must be placed under due custody, because it is the key element that will enable the second of the legal principles that make the testimonial evidence valuable on the day of the hearing to be guaranteed, immediacy, by projection before the Court.

#### d) Closure

Keeping in mind the tension to which the person examined may have been subjected, with closure of the interview, it is attempted to procure a positive emotional tone. To do this, attention is focused again on the person's strengths and interests, or even a few minutes devoted to light conversation about a leisure activity (Carrasco, 2012). He is again encouraged to ask anything or talk about his/her concerns about the judicial process, abuse or consequences of what he/she has revealed. The person is clearly informed of what the following steps in the judicial process will be, with caution not to make promises that cannot be kept. And finally, the person is thanked for his/her participation in the interview, *not for having revealed the criminal offense*.

### CONCLUSIONS

Some criminal offenses committed against especially vulnerable individuals pose significant challenges to the criminal investigation. On one hand, such victimization, due to its characteristics (clandestine, absence of witness and lack of physical evidence), makes the cognitive evidence (testimony of the victim/witness) more important as an item of proof, which in this type of victims, is easier to contaminate because of their special cognitive condition, and on the other, they are already in very fragile condition when they start out, and this requires greater sensitivity to avoid causing them additional harm as they go through the Justice System.

These characteristics have led the Justice System to legally admit prerecorded evidence in such criminal offenses, on one hand, to protect the cognitive evidence (testimony), and on the other, protect the victim from any factors associated with secondary victimization.

Research in psychology of testimony and psychology of criminal victimization has made the knowledge and skills necessary to prerecord evidence in a manner appropriate for achieving the purposes described available to criminal psychologists (in criminal investigation units of police forces and corps) and forensic psychologists.

However, current limitations in equipment and staffing for these proceedings usually keep these technicians from carrying them out and limit effective practice of the higher interest of the especially vulnerable victim. In this sense, we advocate that both judicial authorities and the General Council of Psychologists demand that government consolidate these professional profiles.

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TYPE AND ORDER OF QUESTIONS	PURPOSE
1. Open questions	Acquire information without pressing or directing the answers
2. Specific unsuggestive questions	Clarify the information provided by the victim
3. Closed questions	Clarify the information provided by the victim
4. Suggestive questions	Useful to evaluate the victim's resistance to suggestibility. Should be used with much precaution and always considering the possibility that the information acquired is inaccurate.
5. Confrontation questions	To be used when the victim has offered contradictory information during the interview or with respect to other examinations, to clarify the information provided.



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