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# RIGHTS AND RISKS: THE APPLICATION OF FORENSIC PSYCHOLOGY

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# From police information to miscarriages of justice

Peter J. van Koppen

I was once driving with a technical detective to the scene of a crime: a case of breaking and entering into a house. He told me two burglars were active in the area: one used a nail puller to get in, another used a nail puller together with a screwdriver. Both nail pullers leave a mark exactly 43mm wide. Coming to the house, we indeed found a mark exactly 43mm wide and no marks of a screwdriver. The conclusion of my detective was evident: this burglary had been done by the first criminal. Thus he was convinced as to who had done it, but was sorry that, as yet, not enough evidence had been gathered. How, then, did this policeman know who did it? A simple reason: the manner of breaking-in had restarted after this criminal had recently been released from prison. Undoubtedly, the burglary will be charged to the villain if he is caught at some later time.

Although it is highly likely that this would be justly done, the conclusion is not without problems. A 43mm nail puller is a common item which can be bought in any toolshop. How can we be sure that the break-in has not been done by someone else; for instance by the other habitual burglar who just happened to forget his screwdriver that particular night? Is this conclusion the "shared delusion" among policemen, prosecutors, judges, and juries identified as the main cause of miscarriages of justice by Rattner (1988)?

In this paper I will try to trace the origination of miscarriages of justice from court decision-making back to police information. I base the discussion on the theory of Anchored Narratives, devised by Hans Crombag, Willem Albert Wagenaar and myself (Crombag et al., 1992; Wagenaar et al., 1993).

Let me start with giving a warning. I will discuss a class of cases which we called "dubious cases" (Wagenaar et al., 1993, Chapter 1). These are cases in which the defendant was convicted, but at least some degree of doubt is still logically possible. In these cases the court rejected or overlooked the logical possibility that the defendant might be innocent. Miscarriages of justice form a subset of the class of dubious cases.

In this paper I will argue that this kind of judicial error does not drop out of a blue sky, but is often the consequence of errors made during the police investigation. Of course, I will also try to demonstrate how such errors occur. But let us first turn to the fact finder: the judge or the jury.

## Evaluation of evidence by fact finders

Bennett and Feldman (1981) begin their book *Reconstructing Reality in the Courtroom* by stating that "the criminal trial is organized around story telling". The idea is that the work of the judge consists of determining the plausibility of the stories presented by the prosecution and the defence. Narrative theories, like the one proposed by Bennett and Feldman, have a long history in cognitive psychology (cf. Rumelhart, 1975). Applied to the decision making in criminal cases, these theories hold that evidence derives its meaning from a story context. Detached from a story, facts do not prove anything. A court cannot decide on mere facts, only on a story. Two aspects of a story may determine its believability: the "goodness" of the story in itself (to be defined later), and the degree to which it is supported by facts, the evidence.

The derivation of meaning from story contexts is a well-known and easily illustrated effect (Rumelhart, 1975). People will automatically fill in gaps in stories, and in doing so, give meanings to statements which maybe were never intended. On the other hand, one may edit stories carefully, with

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the intention of suggesting inferences that cannot be proved by the facts. Here is a Dutch example (which is more fully described in Wagenaar et al., 1993).

Mrs Meesters\* was a prosecution witness in the case against Marcel Rotweiler, accused of robbing a bank. According to her she had seen two men running across Gouden Regen Square; one of them jumped into a car and drove away; the car was red; the time was 10 a.m. The problem with this testimony was that the robbery took place at 10.30, and that the escape car, according to the prosecution, was a blue Nissan. It was argued by the prosecution that Mrs Meesters was mistaken about the colour of the car as well as the time, but that she had nevertheless seen the robbers. Why? Because she gave the police the correct licence number: PM-30-PL. The story of how she produced that number, as reported by the police, runs as follows:

I have seen the licence number. I memorized it. Then I went into the library to write it down.  
The number is PM-30-PL.

A number of things are suggested. For instance that the number memorized was the same as the number she saw; that the number she wrote down in the library was the same as the number memorized, and finally that the number she wrote down was in fact the number given in the police report: PM-30-PL. Of the latter inference there is no proof. The slip of paper with the number on it was never produced by the police. Was it thrown away after the number had been copied? The sentence "The number is PM-30-PL" suggests that this is a statement made by Mrs. Meesters. But in reality it is a statement by the police. The police say the number is PM-30-PL and suggest that they learned this either from Mrs Meesters stating so or from reading the slip of paper. However, at the time that Mrs Meesters spoke with the police they already knew the licence number because another witness had told them. And if you look again at the last sentence you realize that they are not actually saying that the number Mrs Meesters gave them is the same as the number they say they know to be the number of the escape car. The short sequence of four sentences suggests that Mrs. Meesters produced the correct car number, but it is not in fact said. Moreover there is no proof of that. One may even wonder why the police threw an important piece of evidence, the slip of paper, away. Was it because at that time they considered Mrs Meesters' testimony unreliable since she had the colour as well as the time wrong? A paraphrasing of the information in the police report, which is perfectly compatible with the first version, but conveys a quite different meaning, runs as follows:

Mrs Meesters stated that she saw the number and tried to memorize it. Then she went into the library to write the number down. She showed us [the police] a slip of paper with a number, which was, however, not the same number as that of the escape car, which we know to be PM-30-PL.

If facts derive their meaning from story context, it must be possible to make two radically different stories that fit the same set of facts. This is, of course, a strategy much used by defence attorneys.

### *Good and bad stories*

Scientists in many disciplines, such as literature, anthropology, and artificial intelligence, have tried to establish what makes a story believable. Rumelhart (1975), Robinson (1981), and Van Dijk (1980) all designed story grammars: sets of rules to which a well-formed story must obey. The story grammar proposed by Bennett and Feldman (1981) was designed specifically for judicial contexts (cf. Jackson, 1988). The manner in which they obtained their grammar is quite interesting. They asked 58 students to tell a story; half of them were asked to tell a true story, the other half to invent a story. Every time a story had been told, the others were asked to guess whether it was a true or invented. The guesses were not better than chance. But stories that were accepted as true shared some properties that the rejected stories were lacking. These properties were:

- \* A readily identifiable central action.
- \* A context (setting) that provides an easy and natural explanation of why the actors behaved in the way they did.

In a good story all elements are connected to the central action; nothing sticks out on its own. The context provides a full and compelling account of why the central action should have developed in this particular manner. If the context does not achieve that effect, then the story is said to contain ambiguities.

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\* All names of witnesses and defendants have been changed.

**Table 1.** Effect of presentation in random order or story order on percentage of convictions

Prosecution	Defence	
	Random order	Story order
Random order	63%	31%
Story order	78%	59%

The analysis of what makes stories plausible was extended by Nancy Pennington and Reid Hastie in a series of subsequent publications (1986; 1988; 1991). Without going into too much detail, it can be said that, according to them, in good stories all actions are explained by factors of three kinds: physical conditions, psychological conditions and goals. Pennington and Hastie's story grammar, and their thesis about the importance of stories, was supported by their research. In one study Pennington and Hastie (1986) showed that the order in which evidence is presented has a major influence on the judgement. Both the prosecution and the defence could present their evidence in a random order, or in story order. The combination of these two variables results in four groups. The dependent variable was the answer to the question whether the subjects thought that the defendant was guilty of first-degree murder. The results are presented in Table 1.

The data indicate that the party who presented the evidence in story order was believed more readily, even though the evidence itself was exactly the same in both conditions. The effect can be as large as changing a 31 per cent chance of conviction into a 78 per cent chance. Clever presentation of the story is half of the work. What is the other half?

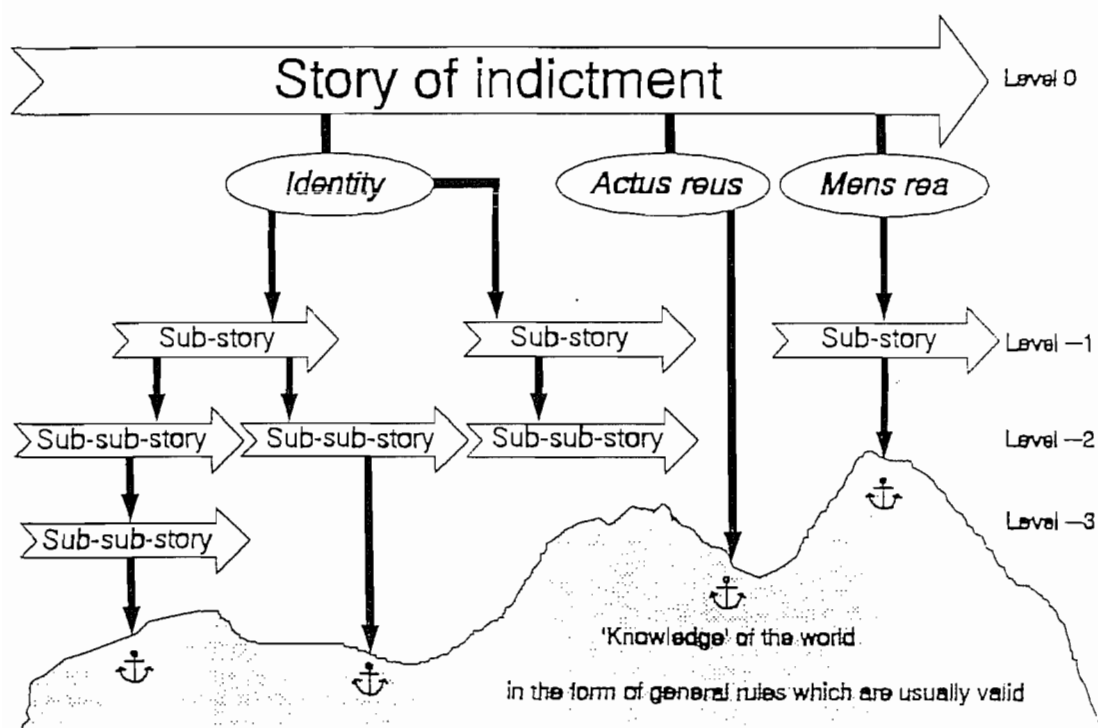
### *Anchoring*

Stories told in a criminal court must not only be good, we want them to be true. The prosecutor's story may be good, but it is not necessarily true. The truth of a story is established by means of evidence. In and of itself, however, evidence does not prove anything at all. Any piece of evidence only proves something if we are willing to believe in a general rule which we hold to be true most of the time. For instance, the testimony by two eyewitnesses will only prove something, i.e. support the story, if it is assumed that eyewitnesses do not lie or make mistakes. The rules that make evidence prove something should rather be phrased like: witnesses speak the truth *most of the time*, and pathologists *almost* never make mistakes. But this possibility of exceptions to rules means that on occasion we must show that a possible exception does not apply.

In a similar manner every piece of evidence needs further support, until it can be safely *anchored* in a general rule that cannot be sensibly contested because all parties acknowledge it to be true in the given case. These general rules are usually common-sense facts of life. We often accept an argument because we unwittingly believe the underlying rule which gives it an anchor, even though an explicit formulation of the rule would cause us to protest or even reject it. Cohen (1977, p.247) calls these generally accepted rules "common-sense presumptions, which state what is normally to be expected but are rebuttable in their application to a particular situation if it can be shown to be abnormal in some relevant respect". A pictorial representation of the anchoring heuristic is presented in Figure 1.

At the top of Figure 1 there is the story of the original indictment, of which the goodness has already been judged satisfactorily. Next comes ordering the evidence in such a way that it forms anchors between the story and a ground of generally accepted common-sense rules. Evidence is offered for three details, but each piece of evidence forms a (sub)story in itself, which needs an anchor in the form of further evidence, which in turn forms a (sub-sub)story in need of an anchor. Whether a (sub)story is safely anchored depends on our willingness to accept as true the common-sense rule of which the (sub)story is an instance.

For the first detail of the original story the anchoring is quite complicated, constituting a long anchor chain. Two pieces of evidence are offered, which apparently cannot not be safely anchored as such in safe common-sense rules. Hence more evidence is sought, constituting sub-sub-stories. The first of these is anchored on to the ground through a sub-sub-sub-story; the second one is not anchored at all. Hence the anchor chain as a whole is ineffective. The second point in the story is directly anchored to the ground of some common-sense rule. That could have been a statement like: after the head is separated from the body, the victim is always dead. There is no point in doubting this rule to be



**Figure 1.** Theory of anchored narratives (from Wagenaar et al., 1993)

generally true and hence no reason to probe deeper for a safer anchor. The third point is anchored through one intermediate story; a police officer's sworn testimony is an example of that sort of anchoring.

Stories, then, are anchored in common-sense rules by means of chains of embedded sub-stories. Every piece of evidence, that is offered to prove the truth of the story, is itself a sub-story in need of an anchor, which takes the form of a generally accepted common-sense rule. Whenever a common-sense rule is offered as an anchor of some piece of evidence, one can argue that the proposed anchor is not safe enough and that the evidence is in need of a safer anchoring through deeper probing into the hierarchy of nested (sub)stories. No common-sense rule is absolutely safe. Still, probing for deeper anchoring stops when a piece of evidence is found that can be anchored in a common-sense rule the truth of which cannot sensibly be doubted.

Apparently not all evidence needs to be represented in the structure. The structure serves for verification only; falsifying evidence can be omitted without further explanation. Thus, the main narrative is supported by evidence, not by *the* evidence. Anchors can be destroyed by arguing that the common-sense rule that was used as an anchor is not safe; or even worse, by arguing that the specific case clearly forms an exception to the rule. The deeper we probe into the hierarchy of nested sub-stories, the more specific the rule serving as an anchor will be. Mere specificity of the rule does not warrant its correctness, it only results in an easier decision as to its correctness. The structure, as depicted in Figure 1, is no warranty for a logically sound decision, nor for a legally correct one.

### Where the information comes from

Preparing evidence to be submitted at trial is the task of police and prosecution. Not all information gathered during police investigation is suitable to become evidence at trial. The prime purpose of the police investigation is to detect crimes and to find those who committed them. Although some of the information gathered by the police during the investigation may eventually wind up as evidence at trial, the quality of information offered in evidence is usually higher than the quality of information used in the investigation. Moreover, information valuable during the investigation may be of a different nature from that which can be submitted in evidence. For instance, an anonymous tip may provide



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the police with a long-hoped-for breakthrough, but as evidence this tip is at best very weak, if at all admissible.

The criterion for the prosecution to submit information in evidence is obviously whether it supports the charge. The prosecution is not required to submit all the information collected during the investigation, although in most countries it is illegal to conceal relevant information from the defendant. An example of illegal concealment happened in the case against John McGranaghan, convicted to a life sentence for serious sexual offenses (cf. *The Independent*, 31 October 1991, p. 1). Ten years after his conviction McGranaghan was acquitted. An analysis of a semen stain on the clothes of one of the victims showed that he could not have been the rapist. The prosecution had known this all along, but had kept the report secret. In the words of Lord Justice Glidewell the prosecutor had 'failed to appreciate the significance of the forensic scientists' report'. This may seem a euphemism for illegally concealing evidence, but the theory of anchored narratives predicts that it may easily happen that investigators fail to see the relevance of information.

## Investigation versus proof

When a criminal offence comes to the notice of the police, their first objective is to find a suspect. In most cases, however, it is not the police, but members of the public who report that a crime has been committed and who point out a suspect to the police (Black, 1970; Bottomley and Coleman, 1976; Erickson, 1981; Greenwood et al., 1977; Steer, 1980; Sellin and Wolfgang, 1964). The gathering of information following such notifications is done by professional investigators, who must abide by the rules governing these investigations.

The decision that turns an ordinary citizen into a suspect of a criminal offence is taken on the basis of a narrative, in the same manner as at a later stage the decision to convict is to a large extent taken on the basis of a narrative. Many of the problems in court decision-making also apply to decisions of the police. There are, however, important differences. At an early stage of their investigation the police can probably only work from an incomplete narrative, mostly based on what was found at the scene of the crime. Some elements of the narrative are available from the start, found by accident, by reports from citizens, through combining and verifying facts, or mere guesswork. Other parts of the narrative only emerge during the investigation. From this incomplete story the investigators work their way up; ambiguities or contradictions are further investigated or put aside as irrelevant. Gradually a coherent and complete story emerges.

Proving guilt, however, is something quite different. It is not done by investigators and it is not done prior to the trial. Proof of guilt is offered at trial by the prosecutor and starts with a ready-made narrative, aimed at the conviction of the defendant. In investigation, it is hoped that the narrative emerges from the facts; in the construction of proof, evidence is merely used to support the narrative that may have emerged on grounds totally unknown to the fact finder. Eventually the court may decide to compose its own narrative, based on evidence discovered at trial, but it never starts its investigation anew. Inevitably, it is aware of the version of the story as presented by the prosecution in the form of the indictment and based on the investigative work of the police and the inferences drawn from this.

Another distinction between investigation and proof is concerned with the level of certainty required for taking decisions. At various stages in criminal procedure, the evidence available must amount to a certain level of certainty to warrant a decision. Probable cause, necessary to arrest and for searches and seizure, requires 40 to 50 per cent of certainty for some (Melton et al., 1987, p. 27). In *Nugent v. Superior Court for San Mateo County* (254 C.A.2d 420, 62 Cal.Rptr. 217,221), however, probable cause justifying an arrest without warrant is defined as a situation where the arresting officer has more evidence favouring a suspicion than against it, constituting a percentage of at least 50. For a conviction "beyond a reasonable doubt" 90-95 per cent certainty seems to be required (Melton et al., 1987, p.125). American jurors apparently consider around 90 per cent enough to convict (Hastie et al., 1983, p.11).

The difference between the quality of investigative information and evidence offered at trial is sometimes misunderstood. I will argue below that miscarriages of justice occur when information that is perfectly sound for investigative purposes but falls short as evidence, is used to prove the guilt of the defendant. It should be noted that under each system of criminal evidence miscarriages of justice will occur, because all pieces of evidence bear a risk, although sometimes quite small, of being wrong. The investigative problems discussed below merely raise the risk of accepting unsound evidence and thus raise the risk of miscarriages of justice.

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## Offence-driven and suspect-driven search

The distinction between offence-driven and suspect-driven searches is related to the starting point of the investigation. In an offence-driven search the starting point is the crime and the facts related to the crime. The identity of the culprit, then, is inferred from these facts. In a suspect-driven search someone becomes a suspect for no clear reason, or at least no reason that is explained by the known facts of the crime. Only then is an attempt made at finding evidence which links this particular suspect to the crime. Such a search is limited right from the start. An example of the latter is showing photographs of known criminals to a witness; an example of the former is finding a fingerprint from the scene of the crime among the police-database.

The relevance of the distinction between offence-driven and suspect-driven investigations lies in the diagnostic value of the resulting evidence. In an offence-driven search the narrative is the product of an inferential process, based on information. In suspect-driven search the narrative is the starting point, and the information its product. In offence-driven search one collects so much information that the search logically excludes all possible alternative suspects. In suspect-driven search one needs only enough information to make the suspect look bad. It can even be argued that one may take any citizen, investigate him thoroughly, and connect him to one of the many unsolved crimes in the police files. This may be done by way of recognition tests, an accusation by another suspect, attributing a motive, identifying some piece of intimate knowledge, forensic analysis of traces, a report by a psychiatrist, the absence of an alibi, or even a confession obtained under prolonged interrogation.

In many of the cases discussed by Wagenaar et al. (1993) the suspects became suspects because of their criminal records. Gross (1987) reported that in 60 percent of 92 miscarriages of justice in which a suspect was incorrectly identified by eyewitnesses, the first suspicion was based on outer appearance, while nothing else related the suspect to the crime. This 60 percent is an extremely high figure, compared to Steer's (1980, Table 4:2, p. 97) finding that in of all crimes 21 per cent of the suspects are connected to crimes through suspect-driven searches. Suspect-driven searches appear to promote unsafe convictions.

Evidence in this category is far from perfect, and largely unreliable when used to prove a suspect's guilt rather than to find a suspect. The over-zealousness of police and prosecution, mentioned by Rattner (1988) as the single most important cause of wrongful convictions, works through this very mechanism of starting with a suspect, and collecting evidence against him through a suspect-driven investigation, without realizing that, if you try hard enough, such evidence can be constructed against virtually everybody and that, therefore, such evidence has little diagnostic value (see also Woffinden, 1987, and Waller, 1989). Recent discoveries of unlawful behaviour by the British police, leading to suspension of officers, confirm the dangers of suspect-driven criminal investigations. Another striking example is the Ingram-case (described by Wright, 1993a; 1993b). Ingram was accused of incest by his daughter, but after a prolonged investigation and interrogations, both Ingram and many of his friends were accused of ritual abuse of many people. Only after the psychologist Ofshe demonstrated the unsoundness of the allegations, the case fell through. Too late for Ingram, though, because he already plea-bargained a 20-year sentence.

The diagnostic value of the evidence obtained through a suspect-driven search is an unspecified amount lower than evidence obtained through an offence-driven search, but courts seem to be insensitive to this difference. The distinction could easily be made apparent by asking the simple question: "Why is this particular person accused instead of anybody else?" That question is rarely asked by courts. This is at odds with 'beyond a reasonable doubt'-standard, as Allen (1991) noted. If the "beyond a reasonable doubt" standard is taken literally, the doubt should be the focus of attention at trial and the State should suffer the burden of demonstrating that there is no plausible account consistent with innocence. This would mean the prosecution should demonstrate in court that it has made serious attempts to falsify its own narrative, and that all such attempts have failed. In practice this is never done, i.e. the story of the indictment and its anchors are verified, but alternatives are not logically excluded or falsified.

## Verification and falsification

Logically, hypotheses are tested by two complementary processes: verification and falsification. An attempt at verification means looking for facts that are predicted by the hypothesis; falsification means looking for facts that are excluded by the hypothesis. To test a hypothesis both processes are necessary. Falsification is not some sort of luxury, in which one only engages when there is an excess

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of means. As long as alternative hypotheses are not excluded, they may be more likely than the verified hypothesis (comp. Wason and Johnson-Laird, 1972).

An uncommon example may clarify the distinction. A 12-year old boy living in the Dutch town of Enschede was accused of sexually abusing about 200 children. The case had started with an accusation of a single child, but had grown rapidly after the police solicited for more cases in the neighbourhood where the boy lived. The boy confessed to all cases. One may wonder how one 12-year old boy can find the time to abuse 200 children in a time-span of less than 18 months. He was interviewed as follows: the interviewing policeman showed him a photograph of a child in the neighbourhood and asked whether or not the boy also abused this child. To almost all the boy said yes, which constitutes a verification of the accusation. The police never tried a simple falsification: showing the boy pictures of children from other towns. The police afterwards said it was not necessary because the boy had a photographic memory.

The distinction between verification and falsification is not always as clear as in the case of the Enschede boy. The logical intricacies may be quite confusing. In its simplest form falsification of a criminal charge means that alternative stories of a denying suspect are checked. If the suspect's narrative appears to be false, this contributes to the proof of the charge brought against the suspect. The Speckman case may serve as an example (see Wagenaar et al., 1993). Speckman, who was suspected of committing a series of bank robberies, suddenly began to spend large amounts of money. The police, of course, thought he was spending the proceeds of these robberies. His own explanation was that he earned this money through (illegally) letting out his building licence. The hypothesis to be tested therefore is: "If Speckman spends a great deal of money, he must have robbed the banks." The alternative is: Speckman may have earned the money through letting out his licence. Thus there are four possibilities:

1. Spending money + let out building licence (forbidden)
2. Spending money + robbed bank (permitted)
3. Does not spend money + let out building licence (permitted)
4. Does not spend money + robbed bank (permitted)

The police investigation revealed that Speckman had spent an estimated 200,000 guilders, which was about the sum that had been robbed from the various banks. This information means a verification of the relationship between the robberies and the spending. Falsification of the hypothesis means verification of the opposite hypothesis. So the police checked with the Regional Building Authority whether building licences were ever let out, and how much money that would yield. The answer was that such licences are indeed sometimes illegally let out, but that the going price for this is such that it would only yield a few hundred guilders per month. Thus, Speckman's story appeared to be false, which contributes to proving of the charge.

Note that a successful falsification does not always completely destroy verification; even if Speckman had another source of income, it would still be rather suspect that he spent just the amount of money that was taken from the banks. However, the reasoning that his spending *must* mean that he robbed the bank is not so compelling any more. Some falsifications, however, completely destroy the hypothesis. An example of this would be an ironclad alibi; if it could be proved that Speckman was at another place during the robberies, not only his identification by eyewitnesses would be destroyed, but the entire hypothesis that he robbed the banks would be proved untrue.

Attempts at falsification rarely occurs in criminal investigations. As a rule the prosecution limits its activities to verification attempts. In the perspective of research logic this practice is absurd, but it is predicted by the theory of anchored narratives. Anchors are only verifications of the hypotheses included in the indictment's narrative. Falsifications, except those that are definite, do not destroy such anchors, the anchoring structure simply has no place for them. If falsification attempts occur at all, they are most often the initiative of the defence. But even falsifications offered by the defence are rare, probably because the defence realises that falsifications have no place in the anchoring structure, and may therefore not affect the court's decision process; they may easily be considered irrelevant.

## The trawling method

Particularly deceptive results may be obtained by means of what is called the "trawling method". This method falls into the class of suspect-driven search methods. The term is used for police investigations which start from a generalized and little specified suspicion against a person or, more often, a group

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of people, in which a large police force is engaged, investigating every conceivable detail of his or its behaviour until some sort of mischief is discovered. It is like trawling a very wide net in a place where there may not be many fish, but if the net is wide enough one always may be expected to catch some fish. A good example of the method is the case against Alderman Schuddeboom.

Schuddeboom had been alderman in the municipality of Brunssum for many years. At every municipal election (every four years) politicians in this part of the country are accused by the media of swindling with proxy votes. This local custom has attracted national attention, putting pressure on the local police to investigate the practice thoroughly. Why local politicians are interested in proxy votes is obvious. Schuddeboom obtained them mostly from people in a nearby mobile home camp and from foreign labourers, who in The Netherlands are allowed to vote in municipal elections. The procedure for voting by proxy is as follows: somebody wanting to authorize another to vote on his or her behalf must say so by filling in a form to be signed by both voter and proxy. Nobody is allowed to stand proxy for more than two voters. Thus politicians must not only find voters who are willing to yield their votes, but also a sufficient number of proxies who are willing to use their proxy in the "right" way. The forms to be filled out are distributed by the township. Each form must be certified. Nobody can obtain more than four forms. At the time of the Schuddeboom case only 27 per cent of the thousand or so forms received by the township turned out to be certified. The other forms submitted were apparently obtained from other sources. Hence the mayor sent a letter to all voters whose names appeared on uncertified forms, enquiring whether they had indeed authorized someone else and if so, who their proxy was. In the end only 35 per cent of the forms offered were accepted as legally correct. Collecting proxy votes itself is not illegal, but giving promises in return is, as is forging such forms. The police started a criminal investigation against all persons who had handed in the rejected forms. Seven of them were suspected of fraud, but in the end a criminal charge was only brought against alderman Schuddeboom.

What did he do? Schuddeboom had obtained four signed forms from four voters, who yielded their votes to unspecified proxies. To use these forms he needed two proxies. His gardener agreed to sign himself as a proxy for two voters, and to ask his wife to sign for the two other voters. In reality, however, the gardener, Mr Hol, forged his wife's signature. Alderman Schuddeboom was accused of having provoked the forgery and of having been present when it was done. He denied this. There was no evidence other than the two forged forms, yet he was convicted by the District Court (but acquitted on appeal). The forger, Mr Hol, was never prosecuted, although he had admitted the forgery. Apparently Mr Hol was considered unimportant. The investigation was directed against Schuddeboom because as an alderman he had refused the police an expensive piece of speed control equipment. After a thorough investigation of hundreds of forms, finally one was discovered with a forged signature. It had nothing to do with Schuddeboom, but flimsy evidence had to do.

A less conspicuous but equally misleading set of trawling methods is related to identification procedures. One of these methods is to show a suspect's picture in a nationwide broadcast (such as *Opsporing Verzocht* in The Netherlands and *Crime Watch* in Great Britain) with the question "Who saw this person?" Usually this elicits many responses. It is quite likely that at least one of these will be incriminating for the person shown. Another variety is to show a suspect in an identity parade to witnesses of many different unsolved crimes. Again it is not unlikely that at least some witnesses will recognize the suspect. This method was used in the investigations against Edelschat, Haaknat and Speckman. A third variety is to show to a witness large numbers of photographs of known criminals. Van de Boor (1991) found a case in which a record total of 570 pictures were shown to a single witness. Again it is not unlikely that one of these pictures will resemble the perpetrator seen by the witness.

Trawling methods capitalize on chance and are therefore to be avoided if at all possible. While trawling for evidence, one can find enough incriminating facts against virtually anybody. It is a property of the trawling method that the myriads of facts that indicate a person's innocence will easily pass through the mesh, while a few seemingly incriminating facts are retained and can be combined into sufficient evidence. Such evidence may be the product of random error because of the way in which it was collected. Chance may easily have its way when the net is thrown wide enough and the meshes are small enough. Courts are usually unaware of these effects, and tend to consider evidence independent of the manner in which it was obtained.

## **An example: the Dutch CID**

Traditional police activities started after a crime had been committed. In the fight against organized crime, police investigations often do not start with a crime, but start from a suspicion that some individual

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or some group of individuals may be involved in planning crimes as drug-trafficking (see Crombag et al., 1993). In these police investigations many of the problems discussed above come together. Such "proactive" investigations are suspect-driven, are based on verification and use a trawling method.

In these proactive investigations in The Netherlands the *Criminele Inlichtingen Dienst* (Criminal Intelligence Service; CID) of the police force plays a central role. The CID is involved in police activities which need some form of secrecy: phone-tapping, observation of criminals and running of informers. Most informers are criminals who give information on their co-criminals for whatever reason. The CID collects and arranges the information in the district on a regular basis. When time allows, a group of criminals is chosen from the many which the collected information shows to be active. All attention, then, is given to the group chosen; their lives are thoroughly investigated, their phones are often tapped, they are followed in the hope that they are going to commit a crime in the near future. If the group is not caught red-handed within six months, a year or two years, the CID has to choose between abandoning the investigation or presenting the information gathered as evidence in court. The latter will be appealing, because much time and effort has been invested in the group of criminals. The construction of proof in the criminal cases against many of the individuals in the group, however, will be entirely based on a verification of investigative information after a suspect-driven search and thus will be prone to eliciting miscarriages of justice to one or more of the members of the group.

## Safe evidence

I have discussed three dichotomies: investigation versus proof, offence-driven versus suspect-driven search, and verification versus falsification. The logically soundest method to proceed in both criminal investigation and the construction of proof is offence-driven search, combined with a balanced search for verifications as well as falsifications. In practice, however, this cannot be achieved.

The construction of proof during the trial will always be suspect-driven, because there is a defendant present right from the beginning. So the question to be answered by the court is not "Who did it?", but 'Did *he* do it?' In other words, the objective of the trial is not to uncover the truth, but to evaluate the believability of the indictment's narrative by testing the quality of the available evidence. If in criminal proceedings there is any room for an offence-driven search, it is only in the investigative, pre-trial stage.

All parties involved in criminal proceedings, with the possible exception of the defence, have a strong preference for suspect-driven search and verification, both in the investigative stage and during the construction of proof. As a consequence, investigation and construction of proof, although essentially different, may become indistinguishable, especially after the investigation did not involve discovery of a suspect, but the construction of sufficient proof against a known suspect. In these cases the investigators become judges, although they were never meant to be so. Judges are doomed to repeat what the investigators have already done, allowing innocent defendants little hope that the outcome of the trial will be anything else than a predictable confirmation of the indictment. Thus, miscarriages of justice are best prevented by the police.

## References

- ALLEN, R. J. (1991) The Nature of Juridical Proof. Paper presented at the Conference on Decision and Inference in Litigation, New York, 24-26 March 1991
- BENNETT, W. L., and M. S. FELDMAN (1981) *Reconstructing Reality in the Courtroom*. London: Tavistock
- BLACK, D. J. (1970) The social organisation of arrest, *American Sociological Review*, 23, 1087-1111
- BOTTOMLEY, A. K., and C. A. COLEMAN (1976) Criminal statistics: The police role in the discovery and detection of crime. *International Journal of Criminology and Penology*, 4, 33-58
- COHEN, L. J. (1977) *The Probable and the Provable*. Oxford: Clarendon
- CROMBAG, H. F. M., van KOPPEN, P. J., and WAGENAAR, W. A. (1992) *Dubieuze Zaken: De Psychologie van Strafrechtelijk Bewijs*. Amsterdam: Contact.

- CROMBAG, H. F. M., van KOPPEN, P. J., and WAGENAAR, W. A. (1993) Wandelen in strafvorderlijk niemandsland. In A.W.M. van der HEIJDEN (Ed.) *Criminele Inlichtingen: De Rol van de Criminele Inlichtingendiensten bij de Aanpak van de Georganiseerde Misdaad*. 's-Gravenhage: Vuga
- ERICKSON, R. V. (1981) *Making Crime: A Study of detective work*. Toronto: Butterworth
- GREENWOOD, P. W., CHAIKEN, J. M., and PETERSILIA, J. (1977) *The Criminal Investigation Process*. Lexington: Heath
- GROSS, S. R. (1987) Loss of innocence: eyewitness identification and proof of guilt. *Journal of Legal Studies*, 16, 395-453
- HASTIE, R., PENROD, S., and PENNINGTON, N. (1983) *Inside the Jury*. Cambridge, MA: Harvard University Press
- JACKSON, B. S. (1988) *Law, Fact and Narrative Coherence*. Liverpool: Deborah Charles.
- MELTON, G. B., PETRILA, J., POYTRESS N.G. Jr., and SLOBOGIN C. (1987) *Psychological Evaluation for the Courts: A handbook for mental health professionals and lawyers*. London: Guilford
- PENNINGTON, N., and HASTIE, R. (1986) Evidence evaluation in complex decision making. *Journal of Personality and Social Psychology*, 51, 242-258
- PENNINGTON, N., and HASTIE, R. (1988) Explanation-based decision making: effects of memory and structure on judgment. *Journal of Experimental Psychology: Learning, Memory, and Cognition*, 14, 521-533
- PENNINGTON, N., and HASTIE, R. (1991) A theory of explanation-based decision-making. In G. Klein and J. Orasanu (Eds.) *Decisionmaking in Complex Worlds*. Hillsdale, NJ: Ablex
- RATTNER, A. (1988) Convicted but innocent: Wrongful conviction and the criminal justice system. *Law and Human Behavior*, 12, 283-293
- ROBINSON, J. A. (1981) Personal narratives reconsidered. *Journal of American Folklore*, 94, 58-85
- RUMELHART, D. E. (1975) Notes on a schema for stories. In D. G. Bobrow and A. Collins (Eds) *Representation and Understanding: Studies in cognitive science*. New York: Academic
- SELLIN, T., and WOLFGANG, W. E. (1964) *The Measurement of Delinquency*. New York: Wiley
- STEER, D. (1980) *Uncovering Crime: The police role* (Research study no. 7, Royal Commission on Criminal Procedure). London: HMSO
- VAN de BOOR, L. E. C. (1991) *Over Getuigen, Confrontatie en Bewijs*. Ministry of Justice, The Hague: Research and Documentation Centre
- VAN DIJK, T. A. (1980) *Macrostructures: An interdisciplinary study of global structures in discourse, interaction, and cognition*. Hillsdale, NJ: Erlbaum
- WAGENAAR, W. A., VAN KOPPEN, P. J., and CROMBAG, H. F. M. (1993) *Anchored Narratives: The psychology of criminal evidence*. New York: Harvester Wheatsheaf
- WALLER, Sir George (chair) (1989) *Miscarriages of justice*. London: Justice
- WASON, P. C. and JOHNSON-LAIRD, P. N. (1972) *Psychology of Reasoning: Structure and content*. London: Batsford
- WOFFINDEN, B. (1987) *Miscarriages of Justice*. London: Hodder & Stoughton
- WRIGHT, L. (1993a) Remembering satan: Part I. *The New Yorker*, 17 May, 60-81
- WRIGHT, L. (1993b) 'Remembering satan: Part II. *The New Yorker*, 24 May, 54-76